

**MINUTES
of the
FIFTY-FIFTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**December 4, 2015
Room 322, State Capitol
Santa Fe**

The fifty-fifth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator John M. Sapien, chair, on December 4, 2015 at 10:10 a.m. in Room 322 at the State Capitol in Santa Fe.

Present

Sen. John M. Sapien, Chair
Antonio Ortiz, designee for Deputy Sec.
 Paul Aguilar
Rep. Sharon Clahchischilliage
Carl Foster
Sen. Stuart Ingle
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Mike Phipps
Sen. Cliff R. Pirtle
Sen. Benny Shendo, Jr.
Jerry Stagner
Sen. Mimi Stewart, designee for Sen. Mary
 Kay Papen
Allan Tapia
Rep. Don L. Tripp
James P. White

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Howie C. Morales
Rep. Patricia Roybal Caballero
Rep. Patricio Ruiloba
Sen. William P. Soules
Sen. Pat Woods

Guest Legislator

Sen. Richard C. Martinez

Absent

Rep. Dennis J. Roch, Vice Chair
Sec. Tom Clifford
Lisa Grover
Tracy Hofmann
Rep. W. Ken Martinez
Sen. Mary Kay Papen
T.J. Parks
Sen. Sander Rue
Sen. John Arthur Smith

Sen. Daniel A. Ivey-Soto
Rep. D. Wonda Johnson
Sen. John C. Ryan
Sen. William E. Sharer
Rep. James E. Smith

Minutes Approval

Because the task force will not meet again this year, the minutes for this meeting have not been officially approved by the task force.

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)

Jeff Eaton, LCS

Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Friday, December 4**Welcome and Introductions**

The chair welcomed members and guests and asked members to introduce themselves.

PSCOOTF Funding Formula Subcommittee Report

Senator Stewart, chair, Funding Formula Subcommittee, directed task force members' attention to the report provided by the Bureau of Business and Economic Research (BBER). Over the past two months, the BBER collected and analyzed data to benchmark the calculation of state district funding shares under the statutory formula. Although the formula includes only three variables, the data collection and standardization process proved to be complex due to geographic overlays and the various means by which the data are reported. The BBER independently collected all of the data for all school districts for the period from 2005 through 2014 and verified the data for the three-year period from 2012 through 2014.

Data collected by the BBER align closely with existing data compiled by the Public Education Department (PED). Senator Stewart reported that the subcommittee has drawn few conclusions from the data at this point, but she noted that the Public School Facilities Authority (PSFA) has independently analyzed some of the relevant data. She asked Robert Gorrell, director, PSFA, to present the PSFA's findings.

Mr. Gorrell presented two spreadsheets comparing the existing educational gross square footage by district with the "right-sized" square footage needed under the "Adequacy Planning Guide" (APG). Under the APG scenario, Mr. Gorrell projected a 34 percent drop in the number of districts needing state assistance. Further, he reported that right-sizing district facilities will help to even out any over-funding and underfunding of districts by the state. Mr. Gorrell drew the members' attention to the Gallup-McKinley County School District (GMCSD). The indicators on both spreadsheets show that the state is putting in approximately the right amount

for facilities construction in that district. Mr. Gorrell pointed out that the formula does not take into account the facilities maintenance needs of school districts and that maintenance continues to be a major issue of concern for the GMCSD and many other districts as well.

Certain other districts, including the Zuni Public School District (ZPSD) and the Roswell Independent School District (RISD), would not experience much change in their current need for state assistance under the right-sizing scenario, according to Mr. Gorrell. The ZPSD lacks any tax base, it so will continue to rely on state dollars for school construction. The data in both scenarios show that the RISD is close to being right-sized at present. Mr. Gorrell reiterated the concerns regarding adequate funding for facilities maintenance and observed that right-sizing district facilities is a process that will require time to complete.

Task force members discussed the following issues related to district property tax bases and the formula:

- in rural areas, private range land and crop land may have substantial taxable value that is not necessarily indicative of the capacity of rural landowners to pay for school facilities;
- property valuations are subject to significant variability in districts in which commodities such as oil and gas extraction comprise a significant share of property valuation;
- property valuations may be high in certain urban areas — for example, in the East Central area in Albuquerque — but may still not be indicative of the local population's ability to pay for school improvements; and
- districts may encompass a mix of charter schools and public schools within a concentrated geographic area, raising questions of the way in which the funding formula addresses overlapping school systems.

One member observed that many school districts jumped on board when the funding formula was established but that some of those districts may no longer require state funding for school facilities development. The member cautioned that upcoming reductions in the funding available for public school capital outlay will necessitate assurances that funds are used to pursue the original intent of the formula in establishing a uniform and sufficient capital funding system to meet the needs of all New Mexico schoolchildren.

Task force members discussed the need to ensure transparency in the process of developing any changes to the funding formula. It was noted that all of the data compiled by the BBER will be publicly available on the BBER website and that the information will continue to be updated by the BBER, contingent upon sufficient funding being made available for that purpose. Dr. Foster summarized the subcommittee's intent to work with Mr. Burciaga and legislative leadership to continue to assess the formula's effectiveness.

Update: Variables in Maintenance Costs

Chris Huchton, facilities maintenance and operations support manager, PSFA, presented information regarding four variables that affect maintenance efforts: people, methods, money and hardware. He noted that reactive maintenance costs three times as much as preventive maintenance and that regular preventive maintenance is the biggest factor contributing to best business practices for extending the life of school facilities and holding down operating costs. Mr. Huchton observed that the PSFA has been able to track and demonstrate the cost savings for those districts whose leadership focuses on this best practice. He noted that many districts face the challenges of a lack of trained maintenance staff, increased numbers of aging facilities and limited maintenance budgets. The PSFA is now working with the PED to develop cost codes to appropriately identify where maintenance efforts are focused to assist districts in improving their maintenance strategies. In addition, the PSFA is working with a number of different organizations, including the Associated General Contractors, to establish training and certification programs for maintenance staff. Mr. Huchton outlined other maintenance variables that challenge districts, including the high cost of maintaining excess square footage, distance from metropolitan areas (affecting the cost of construction) and the state's weather extremes.

Update: Charter Schools in Public Buildings

Martica Casias, planning and design manager, PSFA, updated the task force regarding the 2015 deadline to locate charter schools in public buildings. According to Ms. Casias, 42 charter schools continue to be housed in private facilities. The schools are at risk of losing their charters when they next come up for renewal if they have not relocated to public buildings. Ms. Casias reviewed the educational occupancy standards for charter schools included in statute and the exceptions that are allowed for charter schools in the public buildings mandate.

Greta Roskom, co-executive director of the New Mexico Coalition for Charter Schools (NMCCS), informed the task force that 12 of the 42 charter schools under discussion have lease-to-purchase agreements in place. Ms. Roskom asserted that these schools should be listed with the charter schools in public facilities. One member stated that they will not qualify for that listing until they have completed their purchase.

Patty Matthews, attorney for the NMCCS, addressed the task force regarding lease-to-purchase issues. Ms. Matthews stated that lease-to-purchase agreements could be one of the best ways for charter schools to acquire public buildings; however, the PED has denied approval of the agreements because of concerns that they may violate the Anti-Donation Clause in the Constitution of New Mexico. Having reached an impasse with the PED, the NMCCS requested an opinion regarding the constitutionality of the agreements from the Attorney General's Office (AGO). Ms. Matthews read a letter from the AGO opining that any conflict with the Anti-Donation Clause is speculative. The opinion has not been formalized because of the attorney general's absence, but the NMCCS hopes that the opinion will help with efforts to locate charter schools in public buildings through lease-to-purchase agreements.

Ms. Matthews asked that the task force and the legislature look at revisions to the Public School Lease Purchase Act to facilitate locating charter schools in public buildings. She also noted that there is no database of available public facilities to help charter schools locate appropriate space. Task force members discussed whose responsibility it is to locate space for the charter schools and the numerous times that the statute requiring relocation of the charter schools to public facilities has been amended. Members noted that many legislators oppose extending the deadline again for relocation to public facilities. In response to members' questions, Ms. Casias stated that some of the schools whose charters are coming up for renewal in 2016 may qualify for exceptions to the requirement; however, she could not immediately state how many might qualify for those exemptions. Ms. Casias noted that the PSFA does document exceptions to the space requirements, including the instances in which the charter may be offered space and chooses to refuse that offer.

One member asked how many charter schools have asked for approval of lease-to-purchase agreements and have been refused by the PED. Ms. Matthews stated that 13 of the coalition members were in such situations when the initial lease-to-purchase agreement was submitted to the PED. The other agreements have not been submitted pending resolution of the issues raised by the PED. Two other such agreements are now at issue as well.

Senator Sapien expressed support for charter schools but acknowledged some funding inequities among schools. He stated that the effect of some of the lease-to-purchase agreements is that third parties appear to be making lots of money from the system and that charter schools are not moving fast enough to meet the public facility requirement. Senator Sapien asked Mr. Ortiz to get a letter from the PED to inform the task force of how the attorney general's opinion on the lease-to-purchase issue will affect the PED's view of those agreements.

Task force members discussed the pending deadline for charter schools to be housed in public buildings and the unlikelihood that the deadline will be extended. One member expressed concern that children's safety is at issue if charter school facilities do not meet the adequacy standards. It was noted that the issue may be addressed at the upcoming meeting of the Legislative Education Study Committee. Mr. Ortiz reported that the PED is doing everything it can to help charter schools comply with the requirements. Senator Sapien offered to discuss the issue with the House Education Committee (HEC) chair, Representative Nora Espinoza, for a possible joint HEC/Senate Education Committee meeting during the upcoming legislative session. He also asked that the issue be placed on the first agenda for the task force during the next interim.

Disposing of Public School Buildings: Challenges and Opportunities

Ms. Casias presented a flow chart detailing the general process for school closure. The chart provides a summary of PED, district, Historic Preservation Division of the Cultural Affairs Department and statute processes and requirements. Each process outlined by Ms. Casias involves lengthy steps and numerous options to arrive at the decision to sell, keep and maintain, or demolish, a facility. If the property cannot be sold or disposed of in another manner at the end

of this process, the facility will go back into the district's facilities management plan.

Task force members discussed valuation issues for old buildings and asked whether the facilities must be sold at the appraised value or at fair market value. Mr. Gorrell responded that the PSFA needs to work with the agencies overseeing that to clarify sale opportunities. He noted that Senator Smith had requested that the PSFA work on a plan to dispose of unused or unneeded school facilities and that the flow chart is the first step in defining that process. Mr. Gorrell reported that the PSFA will now be looking into the issues surrounding appraised and fair market values. Members thanked Mr. Gorrell and the PSFA staff for their continuing dedication and hard work on all of the school capital outlay issues.

Adjournment

There being no further business to come before the task force, the fifty-fifth meeting of the PSCOOTF adjourned at 1:05 p.m.